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South Centre Inputs on Workstream III: Prevention and Resolution of Tax Disputes: Co-Leads' Concept Note on Ideas for Potential Solutions

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I. Background

The South Centre is an intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre has 55 Member States coming from the three developing country regions of Africa, Asia, and Latin America and the Caribbean. It was established by an Intergovernmental Agreement which came into force on 31 July 1995. Its headquarters are in Geneva, Switzerland.

In 2016, the South Centre launched the South Centre Tax Initiative (SCTI). This is the organization's flagship project for promoting South-South cooperation among developing countries in international tax matters.[1]

II. Abstract

This submission supports effective and accessible dispute prevention and resolution mechanisms. Optionality ensures flexibility but should be designed carefully to avoid increasing complexities and uncertainties. Complexity and uncertainty can be reduced by firmly and categorically removing arbitration from the scope of the protocol. This will also remove a source of unfairness from the protocol, given that arbitration has proven to be a deeply unjust and unfair mechanism towards developing countries.

Mutual Agreement Procedures (MAPs) can be a core dispute resolution mechanism. The protocol can provide for minimum commitments relating to issues such as transparency and exchange of information for parties that ratify it. The implementation can be done via a UN Fast Track Instrument.

Mediation and conciliation are untried and untested tools in resolving cross-border tax disputes and should not be considered at this stage until their efficacy is better established.

Dispute prevention is of core importance to developing countries and the protocol can play a bigger role in this regard. The protocol can strengthen preventive mechanisms

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such as simultaneous tax examinations, joint audits, and Advance Pricing Agreements (APAs), which can yield substantial benefits. The protocol should take into consideration the different needs and capacities of countries. The UN Transfer Pricing Database, first proposed by the South Centre, offers significant potential to improve transfer pricing outcomes by addressing the lack of comparables, especially for developing nations.

Lastly, it is also important to develop alternative profit allocation methods and move away from the Arm's Length Principle (ALP) which is increasingly unworkable.

III. General Comments

The South Centre congratulates the Intergovernmental Negotiating Committee (INC) for the progress achieved and welcomes the Co-Leads' Concept Note on Ideas for Potential Solutions (24 October 2025) prepared by Workstream III under the leadership of Jamaica and Germany.

IV. Specific Comments

Below are our specific comments and inputs to the Issues for the Committee's consideration, from *(a)* to *(n)*:

on optionality,

a) Comment

- The concept of "core mechanisms" provides a systematic approach for identifying a "common denominator" which is required since this is a multilateral convention. This can enhance tax certainty for businesses as well.
- Optionality ensures flexibility, allowing countries to apply what aligns with their capacity and circumstances.
- The Protocol can provide for minimum commitments relating to issues such as transparency and exchange of information for parties that ratify it.
- Mutual Agreement Procedure (MAP) can be one of the core mechanisms for dispute resolution.

b) Comment

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The mechanisms under the protocol should not supersede existing mechanism under bilateral treaties but the protocol can allow partner states to have the option to override existing mechanisms in favour of the mechanisms in the protocol upon mutual agreement.

c) Comments

- The core mechanisms can be optional for countries but allow for minimum commitments and/or standards such as transparency and exchange of information.
- However, "too much optionality" may make the protocol "too complex" and can also be misused or used selectively. Complexity can be potentially reduced by completely removing Mandatory Binding Arbitration from the scope which may reduce the need for so much optionality.
- For certainty purposes, individual states that sign on to the protocol can make a list of mechanisms that they are willing to apply and transmit this information to the UN.
    - UN can carry out match-making to group countries who prefer the same options, consolidate this information for all Member States and keep it updated via a central database similar to the OECD BEPS MLI Matching Database.
    - This will also enhance cooperation between like-minded states who prefer the same options.
    - **Implementation can be done via a UN Fast Track Instrument.**
- This instrument submitted by a state should also not stop states from applying a particular mechanism for a given dispute, even if not listed in their declaration to the UN, upon mutual agreement.
- The protocol can provide guidance for the application of each mechanism for certainty purposes.

on scope,

d) Comment

- The examples given are broad and covers different situations which can constitute a cross-border tax dispute.

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- However, the protocol should not apply where there is no common legal basis, for instance, where there is no bilateral tax treaty.
- Protocol could cover:
  - Existing disputes under tax treaties where the treaty does not have a provision for MAP
  - Disputes relating to the protocols (eg – cross-border services, or in the future HNIs or IFFs)
  - Potentially even disputes relating to the Framework (eg – relating to meaning of Commitments, etc). In this case its interaction with Article 20 (Settlement of Disputes arising under the Convention) will need to be carefully delineated.
- The protocol should address cross-border tax disputes.
- It should not affect domestic tax disputes.

e) Comment

Where there is no treaty, a dispute could not arise with respect to double taxation as it is a clearly defined principle of international tax that source states have prior right to tax income derived from their jurisdictions while resident states have unfettered right to tax their residents. With such unfettered right also runs the choice to exempt foreign earned income of the resident or provide a unilateral relief to the resident.

Accordingly, cross-border disputes could only be defined in the context of disputes arising from application and interpretation of a shared legal basis like a tax treaty, the protocols to the UNFCITC and the UNFCITC itself.

As such, situations that meet most of the identified characteristics of a cross-border tax dispute but lack a shared legal basis, such as a bilateral or multilateral treaty cannot be in scope for a cross-border disputes. Such issues should handled under the domestic frameworks of the respective states, subject to applicable public international law or established norms.

f) Comment

- The implication of this question is that the Conference of Parties (CoP) has restricted powers and should be empowered on a case-by-case basis. This is an incorrect implication.

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- The CoP is the main decision-making body of the UN FCITC and in principle should be able to take any action it deems fit and this should be reflected in the Articles on the CoP in the Framework Convention.

on dispute prevention,

g) Comment

- This protocol can arguably play a more important role regarding *dispute prevention* which is less controversial and where cooperation is sorely required, compared to *dispute resolution* where multilateral approaches that may potentially supersede domestic courts raise concerns from various developing countries.
- Thus, the protocol should provide a legal basis to enhance cross-border administrative cooperation in dispute prevention.
- The protocol can provide legal basis for exchange of information, cooperative compliance, APAs including bilateral APAs, joint audits and simultaneous examinations.
- Such prevention mechanisms should accommodate differences in capacity of countries. The Framework Convention should also make a provision for capacity-building on the dispute prevention tools.

h) Comment

Capacity building is key for developing countries. However, an essential prerequisite is rules that are simple to administer.

Commitment on capacity building could include knowledge transfer, technology transfer, databases, and centres of excellence/ knowledge. These can include dispute prevention.

on dispute resolution,

i) Comment

- Yes it is adequate. MAP can remain optional and become a core mechanism.
- Further guidance on best practices to make MAPs more effective and accessible can be provided.

j) Comment

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- Some of the measures include maintaining timelines for resolving disputes under MAPs, which can be extended beyond 2 years to allow sufficient time for resolution, after which states can explore other mechanisms from the list.
- Mandatory arbitration remains a concern for many developing countries since it threatens sovereignty, it is prohibitively costly, dominated by experts from developed countries, and has given deeply negative experiences through investor state disputes for developing countries. Hence, it should be completely removed from the scope of the protocol.
- The protocol can provide for maintenance of data on progress of cases under MAPs.

k) Comment

- Mediation and conciliation are largely untried and untested tools in resolving cross-border tax disputes.
- Including them in the protocol at this stage takes developing countries into uncharted territory where the risks may outweigh the rewards.
- It may be better to have evidence of their efficacy before including them into such an important protocol.

l) Comment:

The UN can establish a forum to manage the administration of this protocol. Some of the roles would be to maintain data on lists of mechanisms specific countries have subscribed to, manage capacity building, among others.

on information asymmetries and databases,

m) Comment

- We welcome the detailed discussion on a UN-managed transfer pricing database, a proposal that was first made by the South Centre.
- Access to information including transfer pricing databases is important for developing countries to prevent disputes.
- A UN-managed transfer pricing database would be a “global public good” and a welcome move to give developing countries access to comparables to enforce transfer pricing rules.

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- Members can contribute to building the database e.g. through using domestic corporate registries to feed into the global database and also financial contributions for its maintenance.
- The protocol can provide guidance for data collection for the databases and how to anonymize the data for incorporation in a public database, and safeguards for data confidentiality and integrity.
- Alternatively, rather than creating a database, the UN can act as a facilitator and focus on enhancing access to existing databases. However, the issue of lack of comparables that suit developing country economies would still remain under this approach and require resolution.
- At the most fundamental level, the arm's length principle itself is increasingly unworkable, especially in the modern highly digitalized economy. This requires the creation of new ways of allocating profits to jurisdictions that are both simpler and easier to enforce.

n) Comment

- These two databases on MAPs (anonymized MAP outcomes, MAP statistics) and APAs can be considered. However, they will require confidentiality safeguards.